

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re Bernardo L., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

S.G. et al.,

Defendants and Appellants.

D061887

(Super. Ct. No. SJ012115)

APPEALS from an order of the Superior Court of San Diego County, Ana L.

Espana, Judge. Affirmed.

S.G. (Mother) and Bernardo L. III, (Father), the parents of Bernardo L., appeal the order denying their Welfare and Institutions Code<sup>1</sup> section 388 petitions seeking further reunification services in this second dependency proceeding involving their son. Mother

---

<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

contends she met the statutory requirements of section 388. Father contends the juvenile court abused its discretion by denying his section 388 petition. Counsel for the minor has submitted a brief supporting Mother's and Father's contentions.

## FACTS

### *The First Dependency*

In the first dependency case, Bernardo was removed from his parents' custody on December 31, 2008, because drug paraphernalia and marijuana had been found in the family home within reach of Bernardo, who was four years old at the time. The following month, the San Diego County Health and Human Services Agency (Agency) filed a dependency petition on behalf of Bernardo, alleging Mother had a history of substance abuse, Father admitted he smoked marijuana,<sup>2</sup> and Bernardo had been exposed to violent confrontations between Mother and Father's uncle. (§ 300, subd. (b).)<sup>3</sup>

On February 18, 2009, the juvenile court sustained the petition as amended, ordered Bernardo placed with the paternal grandparents, and ordered reunification services for Mother and Father.<sup>4</sup> At the 12-month review hearing, the court terminated services for the parents and set a section 366.26 hearing. Five days before the section

---

<sup>2</sup> Father said he smoked marijuana for medicinal purposes (depression, insomnia, stress and loss of appetite) and had a valid medical cannabis card from a doctor.

<sup>3</sup> An amended petition also alleged Bernardo had been exposed to violent confrontations between Mother and Father.

<sup>4</sup> Mother and Father appealed the jurisdictional and dispositional orders in the first dependency. We affirmed the lower court's orders in a nonpublished opinion. (*In re Bernardo L.* (Aug. 21, 2009, D054670).)

366.26 hearing, Agency conducted a Team Decision Meeting with the paternal grandfather and the parents to discuss, among other things, the parents' visitation with Bernardo after the grandparents were appointed his legal guardian. The grandfather agreed he would continue to allow supervised liberal visitation for the parents. At the section 366.26 hearing on September 29, 2010, the court appointed the paternal grandparents as Bernardo's guardians, ordered reasonable visitation for the parents to be determined by the guardians, and terminated dependency jurisdiction.

### *The Second Dependency*

In July 2011, Agency learned that Bernardo was living with his parents. The discovery was made after police arrested Mother and Father in the family home, where more than 100 marijuana plants were being cultivated with a hydroponic system. The room that contained the marijuana plants was directly across the hall from the bedroom where Bernardo slept. Although the room with the marijuana plants was kept locked, police found marijuana in the bedroom accessible to Bernardo.

Agency filed a second dependency petition on behalf of Bernardo, alleging his guardians had left him unattended and inadequately supervised by allowing him to live with his parents despite the grandfather's agreement at the Team Decision Meeting to allow only supervised visits between him and his parents. (§ 300, subd. (b).)

The paternal grandfather told the social worker he did not know about the marijuana cultivation at his son's residence. The grandfather said unsupervised visits between Bernardo and his parents began after the first dependency case was closed and

gradually increased from days to weeks at a time. The grandfather also said he would abide by the requirement that visits between Bernardo and his parents be supervised.

The social worker interviewed Bernardo, six years old at the time, at Polinsky Children's Center. Bernardo told the social worker he lived "[w]ith my mom and dad" and slept in their bedroom. Bernardo also related his parents often yelled at each other and "my mom always drinks alcohol." Bernardo said he hid in closets and the upstairs bedroom when his parents yelled at each other. "I'm afraid of them when they yell," Bernardo said. "They always yell." Bernardo said he went along with his parents during nights when Father sold movies out of the trunk of the car and Mother sold purses to stores.

Later that month, the social worker interviewed Bernardo in a foster home. Bernardo said his parents slept during the day and he would watch television while they slept. When he became hungry, he would eat cereal. Bernardo said Mother had taught him how to pour milk on his cereal and he no longer had to wake her up when he was hungry.

In September 2011, the juvenile court sustained the second dependency petition, removed Bernardo from the custody of the paternal grandparents and placed him with an aunt, who lived in Hemet and was willing to bring Bernardo to San Diego once a month to visit his parents and grandparents. The court granted the paternal grandparents reunification services, but denied services to the parents. The court ruled Mother could have one supervised visit with Bernardo per month, and supervised telephonic visits, and gave the social worker discretion to expand Mother's visitation, if appropriate and

feasible. The court denied Father's request for visits while he remained incarcerated and ordered one monthly supervised visit after his release. The court allowed Father one supervised telephone call per month while in custody.<sup>5</sup>

*Mother's Section 388 Petition*

In November, Mother filed a section 388 petition, seeking reunification services and liberal visitation with Bernardo with discretion to have unsupervised, overnight visits and a 60-day trial visit. As changed circumstances, Mother alleged she consistently visited Bernardo as often as the court allowed and had regular telephone calls with him. Mother also noted she was participating in NA/AA meetings, obtained a sponsor, enrolled in the McAllister Institute drug treatment program where she tested negative for drugs, completed eight out of 14 parenting classes at the McAllister Institute, enrolled in domestic violence classes at the South Bay Community Services, and was taking her medications as prescribed by her psychiatrist.

Regarding the best interest prong of section 388, Mother alleged she and Bernardo had a "very strong bond" and providing her expanded visitation and reunification services "would foster this relationship and be very beneficial to [Bernardo's] well-being." Mother noted the caretaker had related that Bernardo is excited to see her, becomes upset when the visit ends and talks about her in between visits and telephone calls.

---

<sup>5</sup> The parents appealed the juvenile court's decision to deny them services and the restrictive visitation orders, and this court affirmed the denial of services in *In re B.L.* (2012) 204 Cal.App.4th 1111. In the interim, the juvenile court modified the visitation orders, and we held the parents' challenge to those orders was moot. (*Id.* at p. 1117.)

The social worker confirmed Mother was attending a drug treatment program and AA meetings, and enrolled in parenting classes and a domestic violence support group. The social worker, however, expressed concern over Mother's mental health, noting she was reported as acting erratic at the caregiver's home and saying such things as she was going to jump off the Coronado Bridge. The social worker also said Mother was manipulative and refused to accept the caregiver's authority.

On January 27, 2012, the juvenile court ordered liberal, supervised visits for Mother as well as for Father. The court ruled visits could take place via SKYPE, and in Hemet and San Diego as long as they were supervised by Hemet family members. The court directed Agency and the caregiver to make best efforts to provide parents with visits at least once a week.

In February, Mother was discharged from the drug treatment program because of attendance problems, a diluted drug test—considered a positive test, and failure to drug test on another occasion. Mother also had been terminated from the domestic violence support group because of attendance problems. Mother told the social worker she had been too depressed to leave her residence.

Subsequently, Mother enrolled in two other drug treatment programs and re-enrolled in the domestic violence group. At the end of February, Mother enrolled in parenting classes and enrolled in anger management classes the following month.

#### *Father's Section 388 Petition*

On December 5, 2011, Father, while in custody, filed a section 388 petition seeking to receive reunification services, visitation in accordance with the jail's rules,

and, after release, liberal visitation. As changed circumstances, Father reported he had completed two substance abuse treatment classes and classes in anger management, cognitive behavioral therapy, life skills and parenting while in custody. Father alleged the changes he sought would be in Bernardo's best interests because they shared a "very strong bond" and he will always have a presence in Bernardo's life. "Father should be provided services to allow that presence to be healthy," according to the petition.

Father was released from custody on January 5, 2012. He told the social worker that his parole requirements were to attend two NA meeting per week for a year and to complete a parenting course. He also intended to enroll in a Healthy Relationships class.

Father enrolled in a parenting course in February. In March, he enrolled in an anger management class. In April, he enrolled in a drug abuse treatment program. He also attended NA.

In April, Father told the social worker he did not know why he and Mother had not reunified in the first dependency case. "I completed the domestic violence class and the teacher said I was the best student she ever had," Father said. "She wanted me to teach a class." He also said the social worker during the first dependency interviewed him for "five minutes and said I had not implemented what I learned." He said he continued to use marijuana after Bernardo was removed the first time because the social worker and his attorney told him he legally could do so. He said he regretted listening to the social worker and his attorney, and that he no longer used marijuana.

### *The Contested Section 388 Hearing*

On January 9, 2012, the court took Bernardo's testimony out of order. Bernardo testified he loved his parents and wanted to live with them and see them every day. The hearing resumed on April 23, 2012. Mother testified she had been sober since January 2012, when she relapsed with alcohol and methamphetamine. Mother also testified she had advanced to the second step of the 12-step program, but could not remember what it was.

Father testified that although he had completed drug treatment while incarcerated, he enrolled in another drug program in April. Father said he was not addicted to marijuana (or any other substance), but thought the program would help him to maintain his sobriety and not start using marijuana again.

Karen Johnson, a social worker who began supervising the case in October 2011, testified Bernardo appeared very comfortable in the caregiver's home. Bernardo told Johnson he was happy and had no worries about living with his caregiver. Bernardo also said he looked forward to seeing his parents and was very excited to visit them. Johnson testified she did not believe granting the parents reunification services was in Bernardo's best interests. The social worker said such a move could make Bernardo think he was going to live with his parents again, which was not necessarily so and could affect the stability he had in his placement with the caregivers. According to Johnson, Bernardo was unlikely to be returned to his parents even if they were offered services. Johnson said she might have a different opinion about the parents receiving reunification services



if they had showed more progress and less inconsistency with their voluntary services. The court denied the parents' section 388 motions.

## DISCUSSION

Each parent contends the juvenile court erred by denying his or her section 388 petition. Appellate counsel for Bernardo agrees with each parent. We are not persuaded by their contentions.

Under section 388, a parent may petition the court to change, modify, or set aside a previous court order on the grounds of changed circumstances or new evidence. (§ 388, subd. (a).) The petition shall set forth why the requested modification is in the best interests of the dependent child. (§ 388, subd. (b)(4).)

The parent bears the burden of showing *both* a change in circumstances exists and the proposed change is in the child's best interests. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) The juvenile court may consider the entire factual and procedural history of the case in considering a section 388 petition. (*In re Jamika W.* (1997) 54 Cal.App.4th 1446, 1450-1451.)

Rulings on section 388 motions are reviewed on appeal for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." [Citations.] (*Id.* at pp. 318-319.) An order on a section 388 motion will not be disturbed on appeal unless the court has

exceeded the bounds of reason by making an " 'arbitrary, capricious, or patently absurd determination' . . . ." (*Id.* at p. 318.)

*Mother's Petition*

Mother's proffered changed circumstances were maintaining a sober lifestyle; attending NA/AA meetings; retaining a sponsor; enrolling in drug treatment programs, a parenting course and a domestic violence support group; and taking her medications as prescribed by her psychiatrist.

However, as of the April 2012 hearing on her section 388 motion, Mother had been sober for only four or five months. She relapsed in either December 2011 or January 2012 by using methamphetamine and drinking so much alcohol she did not remember ingesting the methamphetamine. "It is the nature of addiction that one must be 'clean' for a much longer period than 120 days to show real reform." (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 531, fn. 9.) Mother submitted attendance logs for NA/AA meetings in September, October and November 2011 and March and April 2012. Mother did not submit attendance logs for December 2011 and January and February 2012. Mother said she was working on the 12-step program and had advanced to the second step, but she could not remember what the second step was. These developments might be considered "changing circumstances" regarding Mother's ability to achieve sobriety, but they do not constitute changed circumstances within the meaning of section 388. (*In re Casey D., supra*, 70 Cal.App.4th at p. 47.) Moreover, Mother's most recent efforts were reminiscent of the pattern she had displayed during the two dependencies, i.e.,

starting services programs, leaving them, and starting new programs shortly before important court dates.

This court and others have concluded that changing circumstances concerning a parent's substance abuse problems do not constitute a sufficient showing to grant a section 388 petition to modify a previous order. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 47 [mother's short drug recovery period and failure to complete prior treatment programs showed only changing circumstances and the court did not abuse its discretion by denying her section 388 petition]; see also *In re Baby Boy L.* (1994) 24 Cal.App.4th 596 [mother with long history of drug abuse, showed only that she was beginning to rehabilitate, not changed circumstances].) Mother's long-standing substance abuse problem had not been eliminated; the evidence showed only that she was making yet another attempt to treat it. Substantial evidence supported the juvenile court's finding that Mother had not shown changed circumstances.

Furthermore, to prevail, Mother had to show that granting her petition would be in the best interests of Bernardo. (*In re Casey D.*, *supra*, 70 Cal.App.4th at p. 47.) In her petition, Mother alleged Bernardo's best interests would be served by granting her reunification services because of the "very strong bond" she shared with him.

Everyone involved in this case agrees that Mother, as well as Father, loves Bernardo very much and enjoys a very strong bond with the child, who has consistently said he wants to live with his parents. But Bernardo's undeniable preference to live with his parents does not necessarily mean it is in his best interests to live with them and be raised by them.

Because Mother, as well as Father, put Bernardo at substantial risk of harm, he became a dependent of the juvenile court. Mother and Father did not make progress toward reunification, and a guardianship was selected as Bernardo's permanent plan. Bernardo became a dependent of the court a second time because his guardian improperly allowed him to live with Mother and Father in a home where marijuana was accessible to him and more than 100 marijuana plants were being cultivated. Although the marijuana and the marijuana plants belonged to Father, not Mother, she was aware of them and did not believe they posed any danger to Bernardo.

It is more difficult to show that granting a section 388 petition is in the child's best interests when the changing circumstances occur after reunification services have been terminated, at which time the child's need for a permanent, stable home is paramount. Consequently, the balancing of the parent's rights against the child's rights shifts, and the child's interest in a stable, permanent home outweighs the parent's interest in reunification. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 420; *In re Casey D.*, *supra*, 70 Cal.App.4th at p. 47.)

By the time of the section 388 hearing, Bernardo had been removed from his parents' custody twice and from his guardians' custody once; he was also detained twice at Polinsky Children's Center and once in a foster home. Bernardo, then seven years old, needed safety and stability in a healthy environment devoid of largely untreated substance abuse and mental health problems. For at least three years, Bernardo has not experienced that supportive environment while living with his parents.

Bernardo was removed from his parents' home originally because of substance abuse and domestic violence. When he lived in his parents' home before the second dependency petition was filed, his parents slept all day while he watched television. If Bernardo became hungry, he would eat a bowl of cereal. He also reported his parents frequently yelled at each other, and his response was to hide either in the bedroom or closets. He said he hated hearing his parents yell, and the yelling frightened him.

The factors to be considered in evaluating the child's best interests under section 388 are the seriousness of the problem that led to the dependency and the reason for any continuation of the problem, the strength of the child's bond with the new caretakers compared with the strength of the child's bond with the parent, and the degree to which the problem may be easily removed or ameliorated and the degree to which it actually has been. (*In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 532.) Only the second factor favors Mother. Her bond with Bernardo is admittedly considerably stronger than his bond with his legal guardian or with his present caretaker. But the seriousness of the reasons for both dependencies should not be understated. A household that includes domestic violence and substance abuse presents dangerous risks for a young child. The same can be said of growing more than 100 marijuana plants and leaving marijuana within a young child's reach. Further, neither yelling so much that one's child hides in the bedroom or in closets, nor taking a young child on nighttime outings to sell purses and then sleeping all day while leaving the child unattended is conducive to a safe and/or healthy home environment for a child. These are basic parenting concepts into which

Mother has shown little insight and, therefore, the juvenile court had ample reason to conclude Mother had not sufficiently addressed the problems of her dependencies.

Bernardo has been in the dependency system for more than three years, almost half his life. Court-ordered reunification services are intended to reunify parents with their dependent children. Mother failed to demonstrate that services would be in Bernardo's best interests. We acknowledge that it is likely that at the end of this dependency Bernardo will be living with relatives, and Mother, along with Father, will have continued contact with him. However, the goal of the dependency at the present time is to have Bernardo reunify with the guardian, not his parents.

Notwithstanding the strong bond between Mother and Bernardo, substantial evidence supported the court's finding that granting Mother's section 388 petition was not in Bernardo's best interests. The court did not abuse its discretion by denying Mother's section 388 petition.

#### *Father's Section 388 Petition*

Father's proffered changed circumstances were completion of two substance abuse treatment classes and classes in anger management, cognitive behavioral therapy, life skills and parenting while in custody; and continuing to take classes after he was released from jail.

With Father, the issue is not so much whether he completed services, but whether he was merely going through the motions—attending classes, for example. The purpose of services is to overcome the problems that led to custody removal in the first place.

(See *In re Samkirtana S.* (1990) 222 Cal.App.3d 1475, 1488.) "The problem is not, as it

were, quantitative (that is, showing up for counseling or therapy or parenting classes, or what have you) but qualitative (that is, whether the counseling or therapy or parenting classes are doing any good." (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748.) "Availing herself of the services . . . is one consideration . . . , but . . . the court must also consider progress the parent has made towards eliminating the conditions leading to the children's placement out of home." (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1142.) "[S]imply complying with the reunification plan by attending the required therapy sessions and visiting the children is to be considered by the court; but it is not determinative. The court must also consider the parents' progress and their capacity to meet the objectives of the plan; otherwise the reasons for removing the children out-of-home will not have been ameliorated." (*Id.* at p. 1143.)

Despite all of the classes Father attended during and after his incarceration, the question remained whether he had insight into Bernardo's needs and why the child was removed twice. Appellate courts have recognized that therapy and parent education may not be sufficiently effective in reducing risk where a parent is unwilling to acknowledge his or her conduct or the causes that resulted in a child's removal from parental custody. (See *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 197 ["[o]ne cannot correct a problem one fails to acknowledge"]; *In re Andrea G.* (1990) 221 Cal.App.3d 547, 553 ["[r]eunification and successful treatment cannot occur until [the parent] accepts responsibility for [the parent's] actions"]; *In re Jessica B.* (1989) 207 Cal.App.3d 504, 516 ["[t]raditional treatment is of limited value until the abuse is admitted"].)

Throughout both dependencies, Father has denied he perpetrated domestic violence or that his marijuana usage constituted protective issues. He has continued to maintain the juvenile court terminated reunification services in 2010 solely on the basis of the social worker's opinion, which he said was formed after speaking with him for five minutes. As to the second dependency, Father has maintained the social worker told him and Mother they could have unsupervised contact with Bernardo and therefore they believed it was all right for the child to stay with them. His lack of parental acknowledgement of the serious problems in the family home and his penchant for blaming others raise significant questions about the qualitative nature of the services he completed. Substantial evidence supported the juvenile court's finding that Father had not shown changed circumstances.

As to the second prong of section 388, we note the child's best interests are the fundamental concern of the juvenile dependency system. This concern underlies the system's primary goals of child safety and well-being, preservation of the natural family and timely permanency and stability for a dependent child. (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227.) A determination of the child's best interests in this context varies according to the gravity of the problem that led to the dependency proceedings, the child's needs and attachments, and the parent's history and circumstances. (See *In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 532.) Again, as was the case with Mother, Bernardo's "very strong" bond with Father is a factor in Father's favor. However, despite Father's attempts both below and before this court to minimize the gravity of the protective issues in this case, the problems were quite serious. Domestic violence,



cultivation of a marijuana farm, and selling pirated movies out of the trunk of a car while a child is sitting in the front seat are not activities that demonstrate safe parenting. These activities make up Father's history in this case and were proper factors to consider in granting or denying a section 388 petition. Notwithstanding the very strong bond between Father and Bernardo, substantial evidence supported the court's finding that Father had not shown a grant of reunification services at this time was in Bernardo's best interests. The court did not abuse its discretion in denying Father's section 388 petition.

#### DISPOSITION

The order is affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

HALLER, J.